IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (W) NO.309/2006

M/s. Riya Garments Pvt. Ltd, Jaipur.
Vs.
M/s. Pratap Rajasthan Copper Foils and Laminates Ltd., Jaipur & Ors.

Date of Judgment :: 12th September, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE AJAY RASTOGI
::

Shri Alok Sharma for the appellant.
Shri Sudhir Gupta for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

This special appeal by the purchaser at an auction sale is directed against the order of the learned Single Judge dated 28.2.2006 in S.B. Civil Writ Petition No.8336/2005 disposing of the writ

petition of respondent nos.1 to 3 – judgment debtors – in terms of the compromise entered into between the said respondents and respondents Industrial Development Bank of India (IDBI) and Industrial Finance Corporation of India Ltd.(IFCI)- the decree holders. The learned Judge observed that so far as other respondents, namely, Industrial Credit and Investment Corporation of India (ICICI), Life Insurance Corporation of India (LICI) and Punjab National Bank (PNB) are concerned, they are free to proceed in accordance with law. The factual background of the case may briefly be stated as under.

On a joint application of the IDBI and IFCI, registered as Original Application no.272/2000, under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 (in short 'the DRT Act'), the Debts Recovery Tribunal, Jaipur (in short 'the Recovery Tribunal) vide judgment dated 24.2.2004 passed a decree for sums of money as mentioned in the judgment. A recovery certificate was issued on the same day i.e.24.2.2004 and sent to the Recovery Officer, Jaipur for execution. The writ petitioners

i.e. respondents nos. 1 to 3 herein (hereinafter referred to as ‘the respondents), preferred appeal before the Debts Recovery Appellate Tribunal, Delhi (in short ‘the Appellate Tribunal) which was registered as Appeal (inward) no.126/2004. No positive order appears to have been passed presumably because the respondents did not deposit 75% of the amount found due under the impugned judgment. On 25.4.2005 the Recovery Officer passed order for auction sale of the land & buildings, plant & machineries etc. One Shri Chetram Sharma, Advocate was appointed Auctioneer. On 26.6.2005 auction notice was issued. The respondents approached the Appellate Tribunal seeking its intervention. On the ground that they had failed to deposit 75% of the amount found due, the Appellate Tribunal declined to intervene in the matter. On 4.7.2005 the auction held. In the meantime, against the aforesaid order of the Appellate Tribunal, the respondents had approached the Delhi High Court in Writ Petition no.10794/2005 seeking exemption from pre-deposit and other directions. On 7.7.2005 the High Court disposed of the writ petition observing that the Appellate Tribunal was seized of the matter and it may

deal with the matter in accordance with law. The Appellate Tribunal dismissed the appeal on 28.7.2005.

Meanwhile, at the auction held on 4.7.2005, the appellant offered Rs.14.60 crores and the bid was knocked in his favour. One Jitendra Kumar Lakhotiya, a shareholder of the respondent-Company filed S.B. Civil Writ Petition no.5592/2005 in which on 27.7.2005 an interim order was passed to the effect that "respondents are at liberty to proceed further with the auction proceeding but shall not confirm the same, if the same is not confirmed so far".

After the Appellate Tribunal dismissed the appeal as aforesaid, on 4.8.2005 the respondents submitted fresh proposal to the IDBI for One Time Settlement (OTS). They also filed the writ petition, giving rise to this appeal, for quashing (a) order of the Appellate Tribunal dated 28.7.2005; (b) the recovery certificate dated 24.2.2004; (c) the entire recovery/auction proceedings or, alternatively, stay of auction/confirmation proceedings till disposal of the appeal by the appellate authority; and (d)

direction to the respondent-Financial Institutions/Bank to properly consider One Time Settlement proposal for its rehabilitation and revival. As circumstances would have it, the Settlement proposal submitted by the respondents was accepted not only by the IDBI but other concerned financial institutions/bank as well. The settlement entered with the IDBI and IFCI, who were the decree holders, were brought on record by the respondents in writ petition no.8336/2005 along with application to dispose of the writ petition in terms of the compromise/settlement. The application came up for consideration before the learned Single Judge on 28.2.2006. The factum of compromise was accepted by the counsel for the IDBI and IFCI; and in the circumstances, the learned Single Judge directed that the compromise be recorded and liabilities and obligations under the impugned order of the DRT dated 24.2.2004 would stand modified in terms thereof.

It may be mentioned here that much prior to the filing of the application by IDBI and IFCI before the Recovery Tribunal for realization of dues from the

respondents, proceeding had been initiated, registered as case no.203/1987, before the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act 1985. BIFR appointed IDBI as the operating agency to finalize rehabilitation of the respondent-company. Attempts to rehabilitate however failed and the BIFR finally sent its opinion to this Court for winding up of the company. The respondent-Company preferred appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which was rejected. Winding up order however could not be passed because of intervention by this Court in a writ petition. The application for recovery of dues was filed by the IDBI and IFCI in this background.

Adverting to the sequence of events, after the learned Single Judge passed the above-said order dated 28.2.2006, the respondents filed application before the Recovery Officer to the effect that the recovery certificate stood modified in the light of settlement with the decree-holders i.e. the IDBI and

IFCI, and therefore, the recovery proceedings may be closed as having become infructuous. The application was opposed by the appellants. They stated that relevant facts such as dismissal of the writ petition by the Delhi High Court seeking intervention in the auction proceeding had been suppressed. Auction was held thereafter in which the appellant was the highest bidder. Rules 60, 61 and 62 of the

Second Schedule to the Income Tax Act in terms of which the decree of the Recovery Tribunal under the DRT Act is to be executed, enjoin the Recovery Officer to complete the process of auction sale and their bid can not be cancelled without completing the process. The Recovery Officer vide order dated 27.3.2006 agreed that the auction proceedings cannot be closed without observing the procedure laid down in the Schedule. The Recovery Officer observed that the order of the High court dated 28.2.2006 did not contain any direction to that effect. He however did not pass final order as certain applications which required to be disposed of were pending.

When this appeal came up for consideration on 17.4.2006, it was stated on behalf of the appellant that in view of the order of the Recovery Officer dated 27.3.2006, the appellant does not wish to press the appeal. The appeal was accordingly dismissed as not pressed. Later, the appellant filed application for recall of the order stating that on application of the respondents under Section 26(2) of the DRT Act, Presiding Officer of the Recovery Tribunal vide order dated 22.5.2006 had withdrawn the recovery certificate holding that by reason of the order of this court dated 28.2.2006, the recovery certificate stood modified and directed the Recovery Officer to drop the recovery proceedings, and in the light of the said order of the Presiding Officer of the Recovery Tribunal, on 26.5.2006 the Recovery Officer had passed consequential order dropping the entire proceedings. In view of these subsequent orders, on 1.8.2006 the application for recall of the order dated 17.4.2006 was allowed in the interest of justice and the appeal was directed to be listed. When the appeal came up for admission on 30.8.2006 counsel for the parties stated that the appeal may be finally heard, and accordingly

made submissions.

Shri Alok Sharma, learned counsel for the appellant, submitted that being auction-purchaser the appellant was a necessary party but no opportunity of hearing was given and the impugned order dated 28.2.2006 was passed behind its back. In any case, order recording compromise merely signifies consent of the parties and the same is not binding on third party. Referring to the provisions of the Second Schedule to the Income Tax Act, counsel submitted that the judgment-debtor can take steps to get the sale set aside on specified grounds and within the stipulated period but not otherwise or afterwards. Where no such step is taken by the judgment-debtor, the auction sale would stand automatically confirmed. In the instant case, the confirmation process was stalled at the instance of one of the shareholders and not the Company i.e. the judgment-debtor. It was submitted that the price offered by the appellant not being inadequate and the appellant being a bona fide purchaser, its interest should be protected as a matter of public policy. Counsel referred to decisions

to buttress his contentions which we shall notice later in this judgment.

On behalf of the respondents it was submitted that the auction purchaser has no locus standi to object to the recording of compromise muchless before the sale is confirmed. In the present case, before sale could be confirmed the respondents entered into settlement with the concerned financial institutions and bank including IDBI and IFCI. The dues were paid to them as per the terms of settlement and thus the liability of the respondents became nil. The Recovery Tribunal has jurisdiction to withdraw the recovery certificate. The dues having been paid, the liability of the respondents under the recovery certificate stood discharged and there was no question of proceeding further in the matter. The Recovery Tribunal therefore rightly withdrew the recovery certificate. Counsel submitted that stay of confirmation was pursuant to a valid order of this Court and the same can not be questioned. Counsel challenged the manner in which the auction was held and the auctioneer abruptly closed the auction to

favour the appellant. In the facts and circumstances, it was submitted, the appellant cannot make any grievance of recording of settlement/compromise resulting in modification in the recovery certificate, as directed by this Court.

The present case, in our opinion, can be viewed from more than one angle. One way of looking at the case is to confine to the correctness or otherwise of the order of the learned Single Judge under appeal. Viewed from this angle, the question for consideration would be whether the learned Single Judge committed error in modifying the recovery certificate and whether the appellant was entitled to opportunity of hearing, and since such opportunity was not provided by reason of its non-joinder, the order is fit to be set aside. The broad angle of the case is whether by reason of payment of the dues to the decree holders resulting in discharge of liability under the recovery certificate, and withdrawal thereof by the Recovery Tribunal under Section 26(2) of the DRT Act, it is a fit case for interference by this Court at this stage.

The relevant provisions may be noticed at this stage. Section 25 of the DRT Act provides for usual modes of recovery of the amount found due and specified in the certificate issued under Section 19 (7) of the Act, namely, (a) attachment and sale of the movable or immovable property of the defendant; (b) arrest of the defendant and his detention in prison; and (c) appointment of receiver for the management of the movable or immovable properties of the defendant. Section 26 lays down that it shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer. However, sub-section (2) thereof provides that notwithstanding the issue of certificate to the Recovery Officer, the Presiding Officer of the Recovery Tribunal can withdraw the certificate or correct any clerical or arithmetical mistake in the certificate. Under Section 27, notwithstanding that a certificate has been issued to the Recovery Officer for recovery of any amount, the Presiding Officer of the Recovery Tribunal may grant time for payment of

the amount, and in that case the Recovery Officer shall stay the proceedings until expiry of the time so granted.

It would thus appear that the Presiding Officer of the Recovery Tribunal has power to withdraw the certificate notwithstanding the fact that the certificate has been issued to the Recovery Officer and process of recovery of the amount found due has been set in motion. He can also extend the time for payment.

The case of the appellant is that in terms of Section 29 of the DRT Act the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 are applicable to the recovery proceedings. The Second Schedule lays down the mechanism for attachment and sale of immovable property. Rule 56 thereof provides that the sale shall be made by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer. Under rule 60 application to set aside sale of immovable property can be made by

the defaulter or any person whose interests are affected by the sale within thirty days from the date of the sale on depositing the amount specified in the sale proclamation with interest thereon @ 15% calculated from the date of the proclamation of sale, and penalty equal to five percent of the purchase money for payment to the purchaser. Rule 61 deals with setting aside sale of immovable property on the ground of non-service of notice or irregularity respectively. Rule 62 also deals with setting aside sale where the defaulter has no saleable interest. Under rule 63 where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, he shall “make an order confirming the sale, and, thereupon, the sale shall become absolute”. Rule 65 provides that where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

It was strenuously contended that once

auction sale is held – being one of the modes of recovery of the amount under Section 25 of the DRT Act - for recovery of the amount found due from the defendant judgment-debtor, the sale can be set aside only in one or the other eventualities or on grounds specified in rules 60, 61 and 62, and where no application is made in accordance with any of these rules, the Recovery Officer has no option but to confirm the sale.

The submission as a general proposition is well founded but is not a complete statement and has little relevance. The case in hand is not one of setting aside sale, but of discharge of decree expressed in terms of settlement or compromise. Even if it were a case of setting aside sale, the fact that the sale was not confirmed would be a relevant consideration in determining the rights of the appellant as auction purchaser.

Dealing with the order of the learned Single Judge it was submitted that a consent order is merely an agreement between the parties with the seal of

court superimposed on it, and third party right cannot be set at naught by consent. Reliance was placed on Dwarka Prasad Agarwal V. B.D. Agarwal, (2003) 6 SCC 230 and Ram Chandra Singh V. Savitri Devi, (2003) 8 SCC 319. The case of Dwarka Prasad Agarwal was one of resolution of private party dispute in a proceeding under Article 226 of the Constitution of India and the observations relied upon by the counsel were made in that context. In the case of Ram Chandra Singh the sale was confirmed and the auction purchaser also took possession of the property. The sale however was set aside at the instance of sisters of the mortgagor. In the facts of the case the Supreme Court found that the High Court had failed to address itself to various questions which arose for consideration. In furtherance of the consent order, the respondents had deposited the amount and the State Bank of India had appropriated the same but, their Lordships observed, the bank cannot unjustly enrich itself while enforcing a preliminary decree of mortgage. It cannot recover the decretal amount from the judgment-debtors at the expense of the auction-purchaser. The legal issues as regards the effect of commission of fraud on court

vis—a-vis the conduct of the parties were still at large. The High Court was required to adjust equities between the parties. In the facts and circumstances, the matter was sent back to the High Court for fresh consideration.

It was submitted that the “valuable” rights of the auction-purchaser were recognized by the Supreme Court in Shri Radhey Shyam V. Shyam Behari Singh, (1970) 2 SCC 405. The question for consideration in that case was whether the order setting aside sale amounts to ‘judgment’ so that letters patent appeal could be filed against the order of the learned Single Judge. In that connection, it was observed that the application under order XXI rule 90 of the Code of Civil Procedure to set aside the sale concerns the rights of a person declared to be the purchaser. If the application is allowed and the sale is set aside the purchaser is deprived of his right to have the sale confirmed by the Court under rule 92. Such a right is a valuable right as upon such confirmation the sale becomes absolute and the rights or ownership in the property so sold become vested in

him. These observations, it would appear, were made in a different context and lend no help to the appellant.

Reference was also made to M/s. Navalkha V. Sri Ramanya Das, (1969) 3 SCC 537. In a winding up proceeding assets of the company in liquidation were put on sale. Dispute arose as to whether there had been adequate publicity. The learned Single Judge arranged for an open bid between the appellant and one Gopaldas Darak in the Court itself without directing fresh auction. The bid of the appellant was highest and the sale was concluded in his favour. However, on the same day one Padam Chand Agarwal made an enhanced offer complaining lack of publicity. He alongwith another contributory preferred appeal to the Division Bench on the ground of inadequate publicity. The appeals were allowed by the Division Bench and it was directed that fresh steps be taken for sale of the property. The order of the Division Bench was approved by the Supreme Court. This decision, it would appear, has no bearing on the present case.

Reliance was placed on Kadiyala Rama Rao V.

Gutala Kahna Rao, (2003) 3 SCC 87, in support of the contention that the auction sale can be set aside on limited grounds specified under rule 90 of order XXI of the Code of Civil Procedure. Apart from the fact that the present case is not of setting aside sale but of discharge of decree, it appears that in the above case, the sale had been confirmed. The executing Court had dismissed the application of the judgment-debtors under order XXI rule 90 to set aside the sale on the ground that they had no saleable interest, the High Court in revision however set aside the sale. The Supreme Court held that the sale can be set aside only on grounds mentioned in rule 90 of order XXI of the Code of Civil Procedure, and accordingly set aside the order of High Court and restored that of the executing court.

In Ram Maurya V. Kailash Nath, (1999) 9 SCC 276 – another decision relied upon on behalf of the appellant, the question for consideration at the instance of the judgment-debtor related to the validity of sale. It was also a case of confirmed sale. The sale was impugned on grounds of material

irregularity and fraud. The Court rejected the contentions. In the Supreme Court, it was submitted that confirmation of sale was illegal as it had been made contrary to the injunction restraining the executing court from confirming the sale. The Supreme Court found that the suit was at the instance of other co-sharers of the judgment-debtor, and not the judgment-debtor himself, and held that it was not open to the judgment-debtor to take such a plea.

The submissions of the counsel for the appellant, if we may say so, overlook the fact that it is not a case of setting aside of sale, as already observed above. It is true that the sale can be set aside on the ground(s) specified in rules 60, 61 and 62 of the Second Schedule to the Income Tax Act which are pari materia rules 89, 90 and 91 of order XXI of the Civil Procedure Code. But getting the sale set aside is not the only remedy. No doubt, where step is not taken in this regard by the judgment-debtor, the auction purchaser has right to get the sale confirmed. But the rights of the auction purchaser – till the sale is confirmed – can be offset by all legitimate

means such as payment of the dues amounting to satisfaction and discharge of decree. Where the decree holder enters into settlement/compromise with the judgment-debtor and the same is accepted by the executing Court, it would amount to discharge of the decree putting an end to the execution proceedings. Certainly, the parties cannot take their own time to enter into the compromise, and where sale of property is held in execution of decree and the sale is confirmed, the property comes to be vested in the purchasers, his rights cannot be taken away under any compromise between the decree holder and the judgment-debtor. In the instant case, however, before the sale could be confirmed, an order came to be passed by this Court staying confirmation of sale in writ petition no.5592/2005.

It is not the case of the appellant that the rights of purchaser are indefeasible even though the sale is not confirmed. Indeed, rule 56 of the Second Schedule to the Income-tax Act says that the sale shall be subject to confirmation by the (Tax) Recovery Officer. Rule 63 specifically deals with confirmation.

We shall notice one or two decisions on the point a little later.

According to the counsel for the appellant, however, the process of confirmation got stalled pursuant to an interim order in a writ petition filed by a shareholder of the respondent-company and not the company itself. May be, the petition in which interim order was passed, was by a share holder, but the fact remains that the sale was never confirmed. It is not possible to find loopholes in the said order collaterally at this stage – particularly when the order was not challenged. It is not in dispute that the respondent submitted proposal for One Time Settlement to the decree-holders and also filed writ petition of its own. Direction to consider the OTS proposal was part of the reliefs claimed in the writ petition. During pendency of the writ petition, the parties arrived at settlement which were brought on record in the writ petition with a prayer to record the settlement/compromise and dispose of the writ petition.

In M/s. Bombay Salt and Chemical Industries

V. L.J. Johnson, AIR 1958 SC 289, referred to by the counsel for the respondents, a Constitution Bench of the Supreme Court held that declaration of highest bid at the auction does not amount to a completed sale and transfer of the property. Whether there is transfer or not would depend on the conditions of auction. Dealing with the provisions of The Displaced Persons (Compensation and Rehabilitation) Act 1954 under which the auction sale had been held in that case, the Court observed that the sale by auction may not be complete till the document is executed.

In Mohan Wahi V. CIT, (2001) 4 SCC 362, the house property of the appellant was put on auction sale for recovery of income tax dues. At the instance of one of his co-sharers the Civil Court by an interim order stayed the confirmation of auction sale on 9.1.1980. The said interim order remained in force till 12.1.1998. In the meantime, the assesee firm approached the higher authorities in the hierarchy of the Income Tax Department. Pursuant to the findings of the Income Tax Appellate Tribunal, the demands against the assessee firm were reduced to nil in the year

1989. The request of the assessee to withdraw the recovery certificate was turned down and the sale was confirmed on 2.3.1998. One of the questions which arose for consideration in the Supreme Court was whether the Tax Recovery Officer could have confirmed the sale on 25.3.1998 when the relevant demands had ceased to exist. Accepting the plea of the assessee, the Supreme Court observed as under:

> "The term "reduced" in sub-section (3) of Section 25 would include a case where the demand consequent upon an appeal or any proceedings under the Income Tax Act has been reduced to nil also. The Tax Recovery Officer is obliged to give effect to such reduction in demand and accordingly amend or cancel the certificate. The scheme of Part III to the Second Schedule indicates that the sale proceedings terminate on their becoming absolute whereafter all that remains to be done is the issuance of sale certificate. However, an order confirming the sale by the Tax Recovery Officer is a must. The efficacy of the sale by public auction in favour of the highest bidder has been made to depend on the order of confirmation by the Tax Recovery Officer by incorporating Rule 56 in the Schedule. It is true that ordinarily if there is no application filed for setting aside sale under Rule 60, 61 or 62 and 30 days from the date of the sale having expired, the Tax Recovery Officer has to make an order confirming a sale. Nevertheless, an order shall have to be actually made. The combined effect of sub-section (3) of Section 225 of the Act and Rule 56 and Rule 63 of the Second Schedule is that if before an order confirming

> the sale is actually passed by the Tax Recovery Officer, the demand of tax consequent upon an order made in appeal or other proceedings under the Act has been reduced to nil, the Tax Recovery Officer is obliged to cancel the certificate and as soon as the certificate is cancelled, he shall have no power to make an order confirming the sale. The sale itself being subject to confirmation by the Tax Recovery Officer, would fall to the ground for want of confirmation."
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> **(emphasis ours)**

The decision in Mohan Wahi in our opinion covers the case of the respondents. To an extent, the instant case stands on a better footing inasmuch as the sale herein was never confirmed. As clarified by the Supreme Court, on expiry of the period of thirty days, the sale does not automatically get confirmed and become absolute, order is required to be actually made to that effect. As a matter of fact, rule 63 of the Second Schedule itself enjoins that the Recovery Officer " shall make an order confirming the sale". Where before such an order is made, the liability is discharged, occasion may never arise to consider the claim of the purchaser at all.

Much argument was made on the point of non-joinder of the appellant and passing of the impugned order "behind its back". Reliance in this regard was

placed on Desh Bandhu Gupta V. N.L. Anand & Rajinder Singh, (1994) 1 SCC 131. That was a case of confirmed sale. A question arose as to whether the auction-purchasers are necessary parties and where the purchase is jointly made by more than one person, whether all of them should be impleaded as party. The question was answered thus-

> "The further contention of Shri Madhava Reddy that the objection petition and the appeal are not maintainable as the wife of Rajinder Singh, joint purchaser was not impleaded eo nominee as respondent, too is devoid of force. The application to set aside the execution sale is primarily against the decree-holder since he is a person at whose instance and benefit the execution proceedings were initiated and the sale was held to discharge his decree debt. Therefore, primarily he is the person entitled to be heard and since he is in-charge of publishing the notices and to conduct the sale, it is he that lays before the court the steps taken or the procedure followed in service of notice or conducting the sale and to establish that they have been done properly, regularly and in accordance with the law. The auction-purchaser gets a right only on confirmation of sale and till then his right is nebulous and has only right to consideration for confirmation of sale. If the sale is set aside, apart form the auction-purchaser, the decree-holder is affected since the realization of his decree debt is put off and he would be obligated to initiate execution proceedings afresh to recover the decree debt. Therefore, in the proceedings under Section 47 or order 21 Rule 90, the decree-holder is the affected necessary party. Though the auction-purchasers need to be impleaded eo nominee as respondent as the

> property was purchased jointly at the court sale, it is enough that one among them had been impleaded as a party. It is not necessary to implead all the joint purchasers."
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> **(emphasis ours)**

These observations were made when the sale had been confirmed and the property had vested in the purchaser. The ratio of the decision however is that dispute arising from setting aside of sale is basically between the decree-holder and the judgment-debtor. The purchaser comes to acquire rights after confirmation of sale as the property gets vested in him only thereafter.

Indeed, in the present case the recovery certificate having been withdrawn by the Presiding Officer of the Recovery Tribunal in exercise of power under Section 26(2) of the DRT Act, by order dated 22.5.2006, the recovery proceedings apparently came to a naught. All said and done, therefore, viewed from a boarder angle, it is not a proper case in which interference by this Court is warranted. Interference with the order of the learned Single Judge as a matter of fact may be a futile exercise. It is true that in passing the order dated 22.5.2006,

the Presiding Officer of the Recovery Tribunal was guided to some extent by the order of the learned Single Judge dated 28.2.2006 but it is equally true that the foundation of both the orders is settlement between the judgment debtors and decree holders arising from payment of the dues and resulting in satisfaction and discharge of the decree.

At the time of hearing counsel for the respondents produced ‘no objection’ by IDBI, Standard Chartered Bank, IFCI, ICICI and LICI issued between 15.4.2006 and 23.6.2006. These certificates were issued apparently pursuant to settlement. It may be recalled that the respondent-company had run into rough weather and it was declared as sick industry under the Sick Industrial Companies (Special Provisions) Act. During the proceedings before the BIFR, IDBI was appointed as operating agency. The appellant’s proposals for rehabilitation and settlement failed and BIFR recommended winding up of the company. The proposed winding up however got stalled in the light of orders passed by this Court. In the meantime, IDBI and IFCI filed applications under Section 19 of the DRT Act for recovery of money

due to them. The proposal for ‘One Time Settlement’ by the respondent-company was apparently a continuation of the attempt for settlement. As circumstances would have it, the company succeeded in arriving at settlements not only with IDBI and IFCI but also other financial institutions referred to above. Any interference with the order of the learned Single Judge, in the facts and circumstances, would unsettle the position.

It transpired in course of hearing that the appellant has challenged the order of the Presiding Officer of the Recovery Tribunal dated 22.5.2006 before the Appellate Tribunal. In the ordinary course, we should have refrained from making observations which may have bearing on merits of the appeal. However, as the facts relevant to passing of the order dated 22.5.2006 giving rise to the said appeal are somewhat overlapping we perforce had to make observations which, we may clarify, would not cause unnecessary prejudice to the appellant in consideration of its appeal before the Appellate Tribunal on merit.

In the result, we find no merit in this

appeal which is accordingly dismissed.

[AJAY RASTOGI], J. **[S.N. JHA], CJ.**

Skant/-